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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6921 OF 2007

Bhumiputra Kamgar Sena ... Petitioner

V/s

1. Bhartiya Kamgar Karmachari Mahasangh
2. M/s. Mona Tona Tyres Ltd. ... Respondents

Mr. Y.M.Pendse for the petitioner.

Mr. G.S.Baj for the respondent No.1.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 22ND OCTOBER, 2007.

P.C.:

1. The petition challenges the order passed by the Industrial Court directing the petitioner to join respondent No.1, which is a recognised union as a respondent, in the complaint filed by the petitioner. The petitioner has filed the complaint under Items 1 (a), 4(a) and 4(f) of Schedule II as also under Items 9 and 10 of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971.

2. The main contention raised in the complaint appears

to be that the petitioner is now representing the workmen employed with respondent No.2 and that the members of the petitioner are being treated unfairly by the employer. It is alleged that unfair labour practices have been committed under Items 1(a), 4(a) and 4(f) of Schedule II and, therefore, the present complaint was being filed. It is also alleged that members of the petitioner union had been suspended in violation of the provisions of the Industrial Employment Standing Orders Act and, therefore, there is an unfair labour practice under Items 9 and 10 of Schedule IV of the Act. Items 1(a), 4(a) and 4(f) of Schedule II of the Act deal with unfair labour practices committed by an employer. The provisions read as under:-

> "**1(a).** threatening employees with discharge or dismissal, if they join a union;
>
> **4(a).** discharging or punishing an employee because he urged other employees to join or organise a union;
>
> **4(f).** discharging office-bearers or active union members, on account of their union activities.

These items specifically deal with discharging and punishing employees on account of their joining a union or forming a union. The grievance of the petitioner is against the employer and not the recognised union. In my opinion, the rights of a recognised union are not

affected by such a complaint. The recognised union will be the only union which has the right to bargain collectively so long as the recognition is maintained under the Act. The petitioner can exercise only such rights as are available to an unrecognised union.

3. In the present case, the petitioner union is not challenging the recognition granted to the respondent union but is only apprehensive and complaining of unfair labour practices committed by the employer under Items 1(a), 4(a) and 4(f) of Schedule II and consequently under Items 9 and 10 of Schedule IV of the Act. No relief is sought nor can it be granted against the respondent No.1 in such a complaint and, therefore, it is not a necessary party. In my opinion, the order of the Industrial Court is, therefore, required to be set aside.

4. Apart from this, the application filed by the respondent No.1 union is for being impleaded as a co-complainant in the proceeding. The Industrial Court has without considering this aspect of the application, directed that the respondent union be added as a respondent to the complaint. This direction is contrary to the prayer made in the application for impleadment as a co-complainant.

5. Petition allowed. The impugned order is set aside. No order as to costs.

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